

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

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|------------------------------------|---|------------------------|
| IN THE MATTER OF THE COMMISSIONS |) | |
| JURISDICTION OVER ELECTRIC VEHICLE |) | |
| CHARGING STATIONS AND SERVICE |) | PSC DOCKET NO. 19-0377 |
| PROVIDERS |) | |
| (FILED JUNE 11, 2019) |) | |
| |) | |

ORDER NO. 9458

I. BACKGROUND

1. On June 18, 2019, by PSC Order No. 9418, the Delaware Public Service Commission (“Commission” or “PSC”) initiated this docket “[t]o consider deregulating electric vehicles charging stations and electric vehicle service providers.”

2. PSC Order No. 9418, *inter alia*, designated me as Hearing Examiner in this docket “to have a full and complete record on the issues identified in 26 *Del. C.* § 201(d) *et. seq.*” (the “Dereg Statute”) and to file with the Commission my proposed findings and recommendations.

3. After informal consultation with the parties, by letter to the parties dated August 16, 2019 (a copy of which was filed in Delafile), I requested a Pre-Hearing Conference (the “Pre-Hearing Conference”) among the parties pursuant to PSC Rule 2.10 “to identify the issues the parties expect to pursue” as described in PSC Rule 2.10.1.2 and the related schedule. The Pre-Hearing conference was scheduled for August 20, 2019.

II. PRE-HEARING CONFERENCE

4. On August 20, 2019, in the Main Conference room of the Public Service Commission, I convened the formal, transcribed Pre-Hearing Conference. In attendance were the following (either in person or via telephone conference call):

On behalf of the Delaware Public Service Commission ("Staff"):
JAMES GEDDES, ESQ.
CONNIE MCDOWELL
PATRICIA GANNON

On behalf of the Delaware Division of the Public Advocate ("DPA"):
ANDREW SLATER
ANDREA MAUCHER

On behalf of the Delaware Department of Natural Resources and Environmental Control
("DNREC"):
JAMESON TWEEDIE, ESQ.
SUSAN LOVE

On behalf of Delmarva Power & Light Company ("Delmarva"):
LINDSAY B. ORR, ESQ.
THOMAS MCGONIGLE, ESQ.

On behalf of Tesla, Inc. ("Tesla"):
PATRICK BEAN

On behalf of ChargePoint, Inc. ("ChargePoint"):
DAVID SCHATZ

On behalf of Cesar Rodney Institute ("CRI")
DAVID STEVENSON

On behalf of The Natural Resources Defense Council ("NRDC")
DANIEL MCALLISTER, ESQ.
KATHLEEN HARRIS

5. I began the Pre-Hearing Conference by outlining a proposed agenda to include three (3) parts: (1) a discussion of the facts, (2) a discussion of the law as it relates to the facts and, (3) a discussion of the path forward in this docket, including a proposed schedule.

a. The Facts

6. Mr. Schatz for ChargePoint began by a recitation of the business model used by ChargePoint for the installation and operation of its EV Charging Stations in Delaware. According to Mr. Schatz, ChargePoint's model involves selling the EV Charging Stations to local site hosts ("Site Hosts") for their own operation. The Site Hosts operate the EV Charging Stations, set the

rates for their use and receive payment therefor, albeit via a ChargePoint billing system. The Site Hosts procure the electric supply for the Ev Charging Stations via their normal billing and supply arrangements with public utilities and/or electric suppliers.¹

7. Mr. Bean for Tesla stated that the Tesla model was a bit different than ChargePoint's model in that Tesla owns the EV Charging Stations itself, leases the space from the various Site Hosts and bills the customer directly.² For the supply, Tesla has distribution accounts with Delmarva and purchases generation from a retail energy provider.³

8. Ms. Orr for Delmarva discussed Delmarva's EV Charging Station program that resulted from a settlement agreement ("Settlement Agreement") in PSC Docket 17-1094. Under the terms of the Settlement Agreement, Delmarva was permitted to operate two (2) Smart Level II Charging Stations and two (2) high-speed EV Charging Stations along main transportation corridors in Delmarva's service territory. These EV Charging Stations have not yet been installed.⁴

9. Mr. Tweedie, counsel for DNREC, deferred to Ms. Love of DNREC for a discussion of DNREC's EV Charging Station program. According to Ms. Love, DNREC operates several EV Charging Stations in various state parks and other DNREC locations throughout Delaware. The electric supply costs for the DNREC EV Charging Stations are paid by the State of Delaware via a bulk purchase arrangement.⁵

b. The Law

10. The parties had differing views as to the applicability of the Delaware Public Utilities Act⁶ to the various owners and operators of EV Charging Stations in Delaware. To the

¹ Transcript of the Pre-Hearing Conference ("Tr") at 28-30.

² Tr. at 31-34.

³ Tr. at 41.

⁴ Tr. at 34-35.

⁵ Tr. at 39.

⁶ 26 *Del. C.* §§ 101 *et. seq.* (the "Public Utilities Act")

extent there was an overall agreement, it was that (a) the Public Utilities Act was never drafted with the intent or understanding of how it might apply to EV Charging Station owners and operators and (b) the Public Utilities Act as currently drafted is unclear as to how it might apply to or affect the EV Charging Station owners and operators. The parties all opined that there could be an interpretation that the Public Utilities Act would make certain owners and/or operators of EV Charging Stations “public utilities” under Section 201 of the Public Utilities Act and/or “electric suppliers” under Section 1001 of the Public Utilities Act, but that was far from clear. All agreed that one of the principal goals of this docket would be to clarify the interpretation of the Public Utilities Act as it applies to EV Charging Station owners and operators and to provide a path forward as to how the owners and operators would be treated in the future.⁷

c. A Path Forward

11. After extensive discussion among all parties, it was suggested that the best path forward would be to agree to a schedule for simultaneous comments and replies by all parties guided by a set of comments for review and consideration by Hearing Examiner (“Comment Guidelines”) agreed to among the parties and approved by me. The goal, as requested by Staff, would be to agree to a schedule (“EV Charging Schedule”) together with Comment Guidelines that could have the Findings and Recommendations of the Hearing Examiner available for the consideration by the full Commission at its currently-scheduled December 12, 2019, public meeting. All parties in attendance agreed with this perspective path forward.⁸

12. To this end, Staff counsel and counsel for Delmarva volunteered to work together jointly to prepare such an EV Charging Schedule with Comment Guidelines, consulting with the other parties, and forward it to me for approval not later than August 30, 2019.

⁷ Tr at 42-53.

⁸ Tr. at 82-83.

III. THE EV CHARGING SCHEDULE AND COMMENT GUIDELINES

13. On August 28, 2019, a copy of the proposed EV Charging Schedule, together with its Comment Guidelines, was forward to me for my consideration. A copy of the proposed EV Charging Schedule is attached as Exhibit 1 to this Order together with its Comments Guidelines attached as Exhibit 2 to this Order.

IV. DISCUSSION

14. As provided in PSC Order No. 9418, as Hearing Examiner I am authorized to develop a “full and complete” record in this docket in order to issue my proposed Findings and Recommendations for the consideration of the Commission.

15. I have listened to and considered carefully the parties’ comments with respect to a path forward in this docket. Their comments were well-founded and well-stated. I agree that the Public Utilities Act is unclear as to how it affects the owners and operators of EV Charging Stations. I further agree with the parties’ view that in considering Order No. 9418 creating this docket and in reviewing the transcript of the proceedings of the Commission in considering that Order, a goal of this docket is to create certainty as to the regulation - or lack thereof - of EV Charging Station owners and operators in Delaware.

16. I am further of the opinion, after reviewing the Commission transcript creating this docket, that the Commission was acting on its “own motion” as described in the Dereg Statute and not via an “Application” as described therein. As a result, several of the requirements of an “Application” for the Commission to determine to forbear regulation of EV Charging Station owners and operators as contained in the Dereg Statute may not apply. Nevertheless, since several of the stated requirements of an “Application” as contained in the Dereg Statute in order for the Commission to forbear regulation were incorporated into the Commission’s Order No. 9418, it

seems reasonable to me for there to be included in the Comment Guidelines the opportunity for the various parties to express their views in this regard.

17. I believe the proposed EV Charging Station Schedule and attached Comment Guidelines are reasonable and appropriate and a well-considered path forward to resolve the issues in this docket expeditiously and are consistent with my charge to “develop a full and complete record.”

V. ORDER

18. For the reasons stated above, I hereby **APPROVE** the proposed EV Charging Station Schedule and Comment Guidelines attached as Exhibits 1 and 2, respectively.

19. A copy of this Order together with the EV Charging Station Schedule and Comment Guidelines shall be filed in *Delafile*.

Respectfully,

/s/ Glenn C. Kenton

Glenn C. Kenton
Hearing Examiner

Exhibit 1

PROCEDURAL SCHEDULE**PSC DOCKET NO. 19-0377**

**IN THE MATTER OF THE DELAWARE PUBLIC SERVICE COMMISSION'S JURISDICTION OVER
ELECTRIC VEHICLE CHARGING STATIONS AND SERVICE PROVIDERS (FILED JUNE 11, 2019)**

PROPOSED PROCEDURAL SCHEDULE (August 28, 2019)

| | | |
|---|-----------|--------------------|
| Commission Enters Opening Order (PSC Order No. 9418) | Tuesday | June 18, 2019 |
| Notice of application published in The New Journal and the Delaware State News | Monday | June 24, 2019 |
| Deadline for Petitions to Intervene | Tuesday | July 16, 2019 |
| Deadline for Objections to Petitions to Intervene | Monday | June 24, 2019 |
| Pre-Hearing Conference | Tuesday | August 20, 2019 |
| Deadline for Public Written Comments | Friday | August 30, 2019 |
| Notice of Public Comment Session to be published | Tuesday | September 10, 2019 |
| Simultaneous Initial Written Comments from the Parties | Wednesday | September 25, 2019 |
| Public Comment Session – New Castle County: 6:30 pm The Gilliam Building Multi-Purpose Room 67 Reads Way, New Castle, DE 19720 | Tuesday | October 1, 2019 |
| Public Comment Session – Kent County 6:00 pm Delaware Public Service Commission Hearing Room 861 Silver Lake Blvd, Suite 100, Dover, DE 19904 | Wednesday | October 2, 2019 |
| Public Comment Session – Sussex County: 6:30 pm Indian River Senior Center 214 Irons Ave, Millsboro, DE 19966 | Thursday | October 3, 2019 |
| Simultaneous Rebuttal Written Comments from the Parties | Monday | October 21, 2019 |
| Hearing Examiner's Report Due | Tuesday | November 12, 2019 |
| Exceptions to Hearing Examiner's Report | Tuesday | December 3, 2019 |
| Commission Hearing and Deliberation | Thursday | December 12, 2019 |
| | | |

Exhibit 2

PSC Docket No. 19-0377 - Comments for Review and Consideration by Hearing Examiner

Proposed Topics and Structure

In order to provide efficient and thoughtful Findings and Recommendations to the Commission related to Docket No. 19-0377, the Hearing Examiner requests the parties address the following specific issues of statutory and regulatory interpretation in their comments, in addition to any technological or policy issues relating to electric vehicle charging that the parties believe are relevant to the Hearing Examiner and the Commission in resolving this docket:

I. Are private entities and/or public agencies, that are not otherwise regulated by the Commission, but own and/or operate electric vehicle charging stations in Delaware for use by the public, “public utilities” under 26 Del. C. § 102(2)?

II. To the extent the Commission concludes the above-referenced entities and/or agencies are “public utilities” under 26 Del. C. § 102(2), should the Commission exercise its authority under 26 Del. C. § 201(d) to forebear from, in whole or in part, supervision and regulation of some or all of electric vehicle charging products and/or services offered by these parties?

III. Should the Commission deem it in the public interest to forbear with respect to the above-referenced entities and/or agencies, is the Commission otherwise required to reach specific findings on the criteria enumerated in 26 Del. C. § 201 (d)(5) as incorporated in PSC Order No. 9418, and, if so, whether such findings are warranted with respect to the above-referenced parties?

IV. Are private entities and/or public agencies, that are not otherwise regulated by the Commission, but own and/or operate electric vehicle charging stations in Delaware for use by the public, “electric suppliers” under 26 Del. C. § 1001(14) and § 1012?

V. To the extent the Commission concludes the above-referenced entities and/or agencies are “electric suppliers” under 26 Del. C. § 1001(14) and § 1012, should the Commission consider amendments to Title 26, Administrative Code, § 3001 Rules for Certification and Regulation of Electric Suppliers, that are more specific to those providing such electric vehicle charging services to the public? If so, please provide specific suggestions and/or a corresponding draft regulation.